

2013 AFSCME MEF/CEO NEGOTIATIONS
UNION PACKAGE PROPOSAL D*

u → c 6/26/13
352 pm

PERIOD OF MEMORANDUM OF AGREEMENT

One (1) Year Term

WAGES – ARTICLE 12

2.25% General Wage Increase

EMPLOYEE PERFORMANCE PLAN (EPP)

Employees who have been at top step for a minimum of one (1) year shall receive a performance evaluation no later than October 31, 2013. Employees shall be entitled to EPP if the overall performance rating is a "meets standard" or above. If the employee's supervisor fails to complete the employee performance evaluation by October 31, 2013, the employee will be entitled to EPP if their last evaluation was a "meets standard" or above. An EPP adjustment of a non-pensionable, one-time, amount of 2.5% will be granted for evaluation ratings of "meets standard" or above to be paid out by December 20, 2013.

PART-TIME EMPLOYEES

MEF:

7.9.1.3 At the discretion of the Department Director or their designee, a part-time employee may be scheduled to work above their benefit level in Table 7.9.1 to assist the department in meeting the scheduling needs of unit on a temporary basis. If the part-time employee exceeds the hours designated for their benefit level in a pay period, the part-time employee shall be credited with pay at the rate of 1.5 times their hourly salary rate for all hours worked in excess of their benefit level in the assigned pay period.

7.9.1.4 For purposes of part-time hours calculations, overtime hours will not count towards the yearly calculations for hours worked in their classification.

CEO:

6.9.2.1 At the discretion of the Department Director or their designee, a part-time employee may be scheduled to work above their benefit level to assist the department in meeting the scheduling needs of unit on a temporary basis. If the part-time employee exceeds the hours designated for their benefit level in a pay period, the part-time employee shall be credited with pay at the rate of 1.5 times their hourly salary rate for all hours worked in excess of their benefit level in the assigned pay period.

6.9.2.2 For purposes of part-time hours calculations, overtime hours will not count towards the yearly calculations for hours worked in their classification.



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OVERTIME AND COMPENSATORY TIME

MEF:

7.12.1.1 If at any time an employee is required to work more than twelve (12) consecutive hours in one shift, the employee shall be compensated at the rate of two (2) times the employee's hourly rate for hours worked beyond twelve (12) hours.

CEO:

6.7.2 If at any time an employee is required to work more than twelve (12) consecutive hours in one shift, the employee shall be compensated at the rate of two (2) times the employee's hourly rate for hours worked beyond twelve (12) hours.

CALL BACK AND STANDBY PAY

MEF:

12.8 Call Back. An employee who is called back to work in response to an emergency or other unforeseen circumstance shall be credited for the time worked, or for three (3) hours, whichever is greater, at the appropriate rate (1.5). This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift. Employees who are called back multiple times during a standby shift shall not receive additional pay until the employee has worked a total of three (3) hours, after which time the employee would be eligible for additional pay, but only for hours worked for each standby shift.

12.8.1 To the extent possible, when an employee has not had a rest period of at least sixteen (16) hours, upon request of the employee, the Department Director or designee may approve time off using an employee's available leave, excluding sick leave, to provide the employee with a rest period prior to their next shift.

12.8.2 For purposes of this Article, any paid time off granted to an employee in accordance with 12.8.1, shall be deemed hours worked.

12.9 Standby Pay. Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate (1.5) for each eight (8) hour shift or portion thereof the employee performs standby duty. In the event the employee is called back to work, the employee shall be entitled to the compensation provided by Section 12.8 above, in lieu of the one hour of standby compensation for that eight (8) hour shift.

12.9.1 Standby pay is not deemed as actual hours worked for the purpose of calculating eligibility for overtime.

CEO:

7.10 Standby Pay. Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate (1.5) for each eight (8) hour shift or portion



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thereof the employee performs standby duty. In the event the employee is called back to work, the employee shall be entitled to the compensation provided by Section 7.11 below, in lieu of the one hour of standby compensation for that eight (8) hour shift.

7.10.1 Standby pay is not deemed as actual hours worked for the purpose of calculating eligibility for overtime.

7.11 Call Back. An employee who is called back to work in response to an emergency or other unforeseen circumstance shall be credited for the time worked, or for three (3) hours, whichever is greater, at the appropriate rate (1.5) . This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift. ~~No employee shall be entitled to more than one (1), three (3) hour minimum call back per eight (8) hour shift. Compensation for subsequent call backs shall be for actual time worked.~~ Employees who are called back multiple times during a standby shift shall not receive additional pay until the employee has worked a total of three (3) hours, after which time the employee would be eligible for additional pay, but only for hours worked for each standby shift.

7.11.1 To the extent possible, when an employee has not had a rest period of at least sixteen (16) hours, upon request of the employee, the Department Director or designee may approve time off using an employee's available leave, excluding sick leave, to provide the employee with a rest period prior to their next shift.

7.11.2 For purposes of this Article, any paid time off granted to an employee in accordance with 7.11.1, shall be deemed hours worked.

EDUCATIONAL AND PROFESSIONAL PROGRAM

MEF:

13.10 Educational and Professional Program. The City will reimburse each employee one-hundred percent (100%) of expenses incurred, up to \$1200.00 per fiscal year, for registration, tuition, fees, and textbooks for courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or designee. ~~The \$1000.00 \$1200.00, \$600~~ may be used for non-college accredited courses, Continuing Education Units, Adult Education Classes, workshops, membership dues in professional associations, professional licenses, and professional certificates which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service, as approved by the Department Director or designee. City Policy Manual Section Education Reimbursement outlines additional details of the program.

CEO:

7.14 Educational and Professional Incentives



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7.14.1 The City will reimburse each employee 100% of expenses incurred, up to \$1,000 \$1,200 per fiscal year, for registration, tuition, fees, and textbooks for courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or designee. The \$1,000 \$1,200 amount \$600 may be used for non-college accredited courses, Continuing Education Units, Adult Education Classes, workshops, membership dues in professional associations, professional licenses, and professional certificates which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service, as approved by the Department Director or designee. City Policy Manual Section - Education Reimbursement outlines additional details of the program.

SICK LEAVE PAYOUT

See Attached (AFSCME Counter-Proposal)

WORKING IN A HIGHER CLASSIFICATION

As proposed by City in City Package Proposal D

GRIEVANCE PROCEDURE – TIMELINES

As proposed by City in City Package Proposal C

CONTRACTING OUT

As proposed by City in City Package Proposal C

DISABILITY LEAVE SUPPLEMENT

As proposed on March 28, 2013 (City Proposal #12)

TENTATIVE AGREEMENTS

Layoff, Tentative Agreement Reached on June 6, 2013
Protective Footwear, Tentative Agreement Reached on January 25, 2013
Uniform Allowance, Tentative Agreement Reached on January 25, 2013
Holidays, Tentative Agreement Reached on May 15, 2013
Grievance Procedure - Arbitrator List Cost-Sharing, Tentative Agreement Reached on May 15, 2013
Health and Dental-In-Lieu, Tentative Agreement Reached on May 15, 2013
Uniform Allowance – Dispatcher Trainees, Tentative Agreement Reached on May 15, 2013
Citywide Labor Management Committee, Tentative Agreement Reached on May 15, 2013



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Holiday-In-Lieu – Public Safety Dispatcher Class Series, Tentative Agreement Reached
on May 15, 2013

Training Pay, Tentative Agreement Reached on May 23, 2013

Safety, Tentative Agreement Reached on May 23, 2013

SIDELETTER AGREEMENTS

Subsidy for Public Transit, Tentative Agreement Reached on May 23, 2013

Sr. Airport Operations Specialists Pilot Program, Tentative Agreement Reached on June
6, 2013

REOPENERS

- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retiree healthcare benefits and funding upon request of either party, but no earlier than January 1, 2014. This may include but is not limited to alternatives to reduce the unfunded liability and options for current employees that comply with IRS regulations.
- Negotiations between the City and MEF shall commence within 14 days upon notice of either party, but no earlier than January 1, 2014. The City and MEF shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.
- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is upheld, declared invalid, ~~or otherwise modified~~, or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.
- Negotiations between the City and MEF shall commence within 14 days upon notice of either party that any action referenced in the previous paragraph has occurred. The City and MEF shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

** This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, AFSCME MEF/CEO reserves the right to modify, amend, and/or add proposals.*



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AFSCME COUNTER PROPOSAL – SICK LEAVE PAYOUT

Proposed MEF language:

- 10.3.6 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.
- 10.3.7 AFSCME will release the claims set forth in the AFSCME complaint, being signed by the retiree, upon retroactive payments to all eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011. Payouts will be based on the provisions contained in Sections 10.3.9 and 10.3.10 below. This will resolve any claims related to sick leave payout upon retirement.
- 10.3.7.1 Unfair Practice Charge No. SF-CE-945-M: The parties agree that the foregoing **section 10.3.7**, resolves the issues underlying unfair practice charge No. SF-CE-945-M filed by the Union with the Public Employment Relations Board on or about March 15, 2012.
- 10.3.7.2 Case No. 1-12-CV-237150: The parties also agree that the foregoing **section 10.3.7**, resolves the issues underlying Case No. 1-12-CV-237150 filed by AFSCME with the Santa Clara County Superior Court of the State of California.
- 10.3.7.3 The City is responsible for resolving Case No. 1-12-CV-224197 (“Deisenroth”). The City in resolving the “Deisenroth” case will deal directly with the Plaintiff’s Counsel.
- 10.3.7.4 The City is responsible for resolving the lawsuit filed by IBEW with the Santa Clara County Superior Court of the State of California.
- 10.3.8 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefited employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:
- 10.3.8.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan; and, b) retired under the provisions cited in the plan; and, c) credited with at least fifteen (15) years of service in this retirement plan, or credited with at least ten (10) years of service prior to a disability retirement.



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- 10.3.8.2 Terminated Employee with Vesting Rights. The employee has terminated service with the City in good standing, retained vesting rights in a retirement system according to provisions in the San José Municipal Code, and following such termination, qualifies for retirement and retires under the provisions cited in the code; and has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.
- 10.3.8.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.
- 10.3.8.4 Death of Terminated Employee. The estate of any full-time or eligible part-time employee who had terminated service with the City in good standing but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code; and has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.
- 10.3.9 Effective June 23, 2013, for purposes of calculating a sick leave payout, an employee's sick leave balance and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on June 22, 2013. Sick leave usage after June 22, 2013, will come first from the sick leave accrued after June 22, 2013. An employee will continue to accrue sick leave after June 22, 2013, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$20 and his or her sick leave balance is 250 hours on June 22, 2013, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 250 hours and a final hourly rate of no more than \$20. This will occur even if the employee has subsequently earned more than 250 hours in sick leave or received a pay increase to an hourly rate higher than \$20. In this example, if the employee uses 200 hours of sick leave after June 23, 2012, thereby reducing his or her sick leave payout balance to 50 hours, the employee will only be entitled to sick leave payout of 50 hours at \$20 per hour at the final hourly rate, regardless of any sick leave accrued after June 23, 2013. This means that if sick leave payout hours are reduced by usage, they are not able to be reestablished in the sick leave balance subject to payout.

~~10.3.6.5~~ 10.3.10 Payout shall be determined as follows.

- 10.3.10.1 If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first as of June 22, 2013,



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multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death June 22, 2013 as follows:

10.3.10.2 Less than 400 hours: Hours accumulated 50% of final hourly rate
or 400 - 799 hours: Hours accumulated 60% of final hourly rate
or 800 - 1200 hours: Hours accumulated 75% of final hourly rate

10.3.11 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

Proposed CEO language:

18.2 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.

18.3 AFSCME will release the claims set forth in the AFSCME complaint, being signed by the retiree, upon retroactive payments to all eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011. Payouts will be based on the provisions contained in Sections 10.3.9 and 10.3.10 below. This will resolve any claims related to sick leave payout upon retirement.

18.3.1 Unfair Practice Charge No. SF-CE-945-M: The parties agree that the foregoing **section 10.3.7**, resolves the issues underlying unfair practice charge No. SF-CE-945-M filed by the Union with the Public Employment Relations Board on or about March 15, 2012.

18.3.2 Case No. 1-12-CV-237150: The parties also agree that the foregoing **section 10.3.7**, resolves the issues underlying Case No. 1-12-CV-237150 filed by AFSCME with the Santa Clara County Superior Court of the State of California.

18.3.3 The City is responsible for resolving Case No. 1-12-CV-224197 ("Deisenroth"). The City in resolving the "Deisenroth" case will deal directly with the Plaintiff's Counsel.

18.3.4 The City is responsible for resolving the lawsuit filed by IBEW with the Santa Clara County Superior Court of the State of California.



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18.4 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefited employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:

18.4.1 Federated City Retirement System Plan. The employee is: a) a member of the Federated City Retirement System Plan; and, b) retired under the provisions cited in the plan; and, c) credited with at least fifteen (15) years of service in this retirement plan, or credited with at least ten (10) years of service prior to a disability retirement.

18.4.2 Terminated Employee with Vesting Rights. The employee has terminated service with the City in good standing, retained vesting rights in a retirement system according to provisions in the San José Municipal Code, and following such termination, qualifies for retirement and retires under the provisions cited in the code; and has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

18.4.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

18.4.4 Death of Terminated Employee. The estate of any full-time or eligible part-time employee who had terminated service with the City in good standing but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code; and has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

18.5 Effective June 23, 2013, for purposes of calculating a sick leave payout, an employee's sick leave balance and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on June 22, 2013. Sick leave usage after June 22, 2013, will come first from the sick leave accrued after June 22, 2013. An employee will continue to accrue sick leave after June 22, 2013, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$20 and his or her sick leave balance is 250 hours on June 22, 2013, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 250 hours and a final hourly rate of no more than \$20. This will occur even if the employee has subsequently earned more than 250 hours in sick leave or received a pay increase to an hourly rate higher than \$20. In this example, if the employee uses 200 hours



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of sick leave after June 23, 2013, thereby reducing his or her sick leave payout balance to 50 hours, the employee will only be entitled to sick leave payout of 50 hours at \$20 per hour at the final hourly rate, regardless of any sick leave accrued after June 23, 2013. This will resolve any claims related to sick leave payout upon retirement.

18.6 Payout shall be determined as follows.

18.6.1 If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first as of June 22, 2013, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death June 22, 2013 as follows:

18.6.2 Less than 400 hours: Hours accumulated 50% of final hourly rate
or 400 - 799 hours: Hours accumulated 60% of final hourly rate
or 800 - 1200 hours: Hours accumulated 75% of final hourly rate

18.7 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

